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October 25, 2001 x 2001 x 3001 x 3000

VIA OVERNIGHT DELIVERY

David Waddell, Executive Secretary Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505

RE:

Rulemaking Amendments of Regulations for Telephone Service Providers,

Docket No. 00-00873

Dear Mr. Waddell:

Enclosed for filing in the above-referenced proceeding are an original and twelve copies of the Comments of United Telephone Company.

Please stamp as received the enclosed copy marked "stamp and return" and return it in the enclosed postage-paid envelope.

Sincerely

John B. Adams, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

IN RE:)
)
AMENDMENTS TO CHAPTER 1220-4-2,)
REGULATIONS FOR TELEPHONE)
TELECOMMUNICATIONS SERVICE)
PROVIDERS)

COMMENTS OF UNITED TELEPHONE COMPANY

United Telephone Company (hereinafter, "United"), by its attorney, submits these comments in response to the August 16, 2001 Notice of Filing ("Notice") regarding Staff's redraft of the proposed amendments to the Regulations for Telephone Telecommunications Service Providers. United is filing these comments in addition to participating in the Industry Consensus comments that Rule 1220-4-2-.06 – Disconnection of Local Service

Subpart (1)(a) of this proposed rule should expressly state that service may be disconnected for nonpayment of government-imposed fees, such as 911 fees, and taxes that telecommunications service providers collect along with charges for the services provided. This would make the rule more clear and would remove any doubt about how the rule should be administered.

Subpart (3)(c) of this proposed rule essentially requires implementation of a poor business practice. United currently accepts guarantors in lieu of deposits, assuming that the offered guarantor has acceptable credit. This benefits customers with poor credit who cannot or who do not wish to pay deposits while safeguarding United's interests. Because the costs to sue on a guaranty are so high compared to the dollar amount of telephone bills generally, the right to sue a guarantor provides

scant protection to United as a creditor. Without the ability to terminate the guarantor's service for failure to pay, United will be left with no effective means of ensuring payment. Accepting a guaranty with no effective means of enforcement is a poor business practice. Certainly no bank would put itself into such a position, and the TRA should not force a telephone company into such a position.

If this proposed rule remains unchanged, local service providers will have no alternative, as mentioned by the Industry in its comments, but to stop accepting guarantors. Unfortunately, customers with bad credit, which are often the poorest customers, will ultimately be harmed by this rule. The harm will take the form of a reduced ability to obtain telephone service. Thus, while obviously intended as a means of increasing subscribership by removing a long-standing basis for termination of service, the rule will ultimately reduce subscribership.

Rule 1220-4-2-.11(1) - Construction of Telephone Plant

United currently restores construction sites as closely as is reasonably possible to their preconstruction condition, but it is not always possible to restore these sites exactly. For example, it is practically impossible to replace mature trees. United therefore suggests that this rule be modified to require that a construction site "to the extent reasonably possible, be restored to the condition in which it existed prior to construction."

Rule 1220-4-2-.16(1)(c) - Installation of Primary Service Orders When Construction is Required

United respectfully requests that this standard be changed to 75% from 90%. This reduction in the percentage is not intended to be a softening of the rule. Instead, it is intended to reflect the realities of providing service in very small exchanges.

United serves several very small exchanges, and often receives no more than 1 service installation request per week. That correlates to 4 service requests per month in some exchanges. Thus, missing even 1 service installation would drop United to 75%, which is substantially below the proposed standard. United tries very hard to meet its service installation commitments. But it is inevitable that a service installation will be missed occasionally, especially in instances where construction is required. The proposed rule, however, leaves no room for error and thus requires absolute perfection. Perfection is unattainable, and United should neither be held to a standard of perfection nor be punished for failing to achieve it.

The proposed rule may make sense for very large exchanges where missing 1 or even 20 installations in a month would not cause the service provider to violate the rule. The rule does not, however, make necessary and reasonable allowances for the differences in the size of the exchanges served by rural companies as opposed to non-rural companies. Being small is not unlawful and United should not be punished or found to violate a rule simply because it is small.

Rules 1220-4-2-.16(o)(4) – Answer Time Exemption for Small Companies

The exemption from answer time requirements contained in Rule 1220-4-2-.16(1)(0) should be established directly in the rule rather than requiring a small company like United to file a separate petition for an exemption. The proposed rule unnecessarily imposes an additional burden when the exemption could easily be included in the rule.

Small exchanges, like other small sample sizes, tend to exhibit a wide variability in any given statistical measure. This variability is a fact of statistics and is why large sample sizes are necessary for valid statistical analysis. Thus, any statistical measure of service quality must take into account the differences in the sample, i.e. exchange, size in order to be valid.

It is not only United that is burdened, however. This proposed rule also unnecessarily imposes burdens on the TRA to review and to act upon such petitions. This especially true when the only qualifications to obtain an exemption are that the company serve 100,000 or fewer access lines in Tennessee and not have installed answer time measurement equipment as of the effective date of the rule. These are readily verifiable factual qualifications, and there is no apparent need for a petition process to be used to ensure that only qualified companies claim the exemption.

Additionally, subpart (iv) of this rule should be clarified to say that the relevant time frame is a calendar year rather than twelve months. This change will have a *de minimis* impact on when the exemption may end for a particular company, but will significantly clarify the relevant monitoring period and aid in tracking of complaints.

Rule 1220-4-2-.17 – Quality Service Measures (QSMs)

The QSMs contained in Rule 1220-4-2-.17 are especially troubling. This is true not only because of the magnitude of the punishment meted out, but also because of the uncertain legal basis to support them. The QSMs, while couched in terms of customer credits, with one exception, are obviously intended to be punishment to a telephone company that fails to meet the proposed new service standards. The Legislature, however, has explicitly described the TRA's authority to penalize carriers who violate its rules. TCA § 65-4-120 provides for a penalty of up to \$50.00 per violation per day of the violation. No other penalties are authorized by statute. Therefore, there does not appear to be any authority granted to the TRA to impose the penalties contained in proposed rule 1220-4-2-.17, except possibly for 1220-4-2-.17(3).

It is also noteworthy that TCA § 65-4-120 requires that a hearing be held prior to imposition of the penalties authorized thereby. To the extent that the QSMs apply automatically and without a hearing, they appear to violate the statutory command to hold a hearing and to violate constitutional guarantees of due process.

United realizes that the TRA has rate-making authority and that the "adequacy" of the service provided is an element to be considered in setting rates. The statutory references to this authority, however, contemplate service adequacy being a factor to be considered in a general rate-making proceeding rather than as a trigger for *post hoc* "customer credits." *See* TCA § 65-5-201. Be that as it may, to the extent that the QSMs have a rate-making function, they result in confiscatory rates.

United's monthly rates for residential local service are as low as \$8.44 per month. Thus, a QSM that reduces that rate by \$10.00 per day, for example, results in negative rates. It should be beyond dispute that negative rates would be deemed confiscatory. Further, the automatic manner in which the QSMs apply would also violate due process protections and the statutory command to fix rates after a hearing.

Although it could be argued that the QSMs are damages awards, that argument necessarily fails as the QSMs require customer credits to be issued to customers other than those who are "harmed" by the "poor service" that led to their invocation. To the extent, however, that the QSMs are damages awards, they would violate due process protections as no adjudication is held to determine liability or the amount of the injury. In any event, it is not clear that the TRA has authority to award damages.

Ultimately, there appears to be no legal basis of support for adopting the proposed QSMs.

Rule 1220-4-2-.17(3) and (4) - QSMs for Trouble Reports and Out-of-Service Clearance

In addition to the legal infirmity of the QSMs generally, these two QSMs have additional problems.

The dollar amount in both of these proposed rules should be changed to \$5.00. With respect to Rule 1220-4-2-.17(4), a credit of \$10.00 per day would exceed the monthly charge for some classes of service in a single day. United charges as little as \$8.44 per month for residential service. Thus, the proposed rule would result in negative rates in a single day. Moreover, United already gives customers a *pro rata* credit when their service is out.

The \$50.00 penalty per trouble report contained in proposed Rule 1220-4-2-.17(3) goes far beyond what is necessary and is likely to have a disproportionate negative impact on small, rural companies like United.

Small exchanges, which equate to small statistical sample sizes, tend to have much broader fluctuations in any measure (here, trouble reports) than do larger exchanges or sample sizes. This fact is demonstrated in Attachment 1 to these comments. Attachment 1 lists trouble reports by exchange by month for United in 2000.² The Flat Creek and Fosterville exchanges demonstrate the wide monthly variability in trouble reports that is expected in small exchanges, although the average number of trouble reports for the year in those exchanges is unremarkable. Note also that the Nolensville exchange – which, while still small, is seven times larger than the smallest exchanges – demonstrates much less monthly variability.

These data were created using the existing definition of trouble report.

Because the proposed standard sets a maximum number of allowable trouble reports by exchange by month³ and this QSM sets a penalty for each trouble report over and above the standard, it is much more likely that a company like United will violate the standard in the first instance and subsequently will have to pay a penalty under QSMs, if and when they are triggered, than will a more urban company. Unfortunately, this is true solely because United serves smaller exchanges. Being small, however, is not unlawful and does not merit punishment.

The proposed minor difference in the allowable number of trouble reports based on exchange size is insufficient to solve this problem. The Industry Consensus standard is an improvement. Even with the Industry Consensus standard, however, it is still much more likely that a small company like United, when operating under QSMs, will trigger the payment requirement than would a larger company. Reducing the dollar amount of the payment will not cure the disproportionate negative impact this QSM has on small, rural companies, but it will reduce the magnitude of the impact.

Rule 1220-4-2-.17(6) – Termination of QSMs

QSMs should be terminated when a service provider operating under them satisfies the applicable service standards for two consecutive months rather than the three consecutive months suggested in the proposed rule. Meeting the service quality standards for two consecutive months is sufficient to demonstrate that the service provider has satisfactorily addressed whatever issues resulted in the implementation of QSMs.

³ See proposed Rule 1220-4-2-.16(e), (f), and (g).

Rule 1220-4-2-.19 – Numbering Conservation

Although the TRA has been delegated certain authority by the FCC, numbering conservation issues fall within federal jurisdiction. Thus, the proposed rules are unnecessarily duplicative of federal requirements. Further, the proposed rules appear to misstate the authority that has been delegated to the TRA.

Participation in thousands-block number pooling is required only of those carriers that have implemented permanent local number portability ("LNP"). The proposed rule, however, on its face applies thousands-block number pooling requirements to all telecommunications service providers.

While Rule 1220-4-2-.19(1)(d) could be taken to suggest by negative inference that those LECs that have not implemented permanent local number portability are not required to engage in thousands-block number pooling, Rules 1220-4-2-.19(1)(a), (b), and (f) require all local service providers to participate in activities that are part of thousands-block number pooling. Under federal law and the FCC's delegation of authority to the TRA, however, only those LECs that have implemented permanent local number portability can be required to participate in thousands-block number pooling. United has not implemented and is not currently required to implement permanent local number portability. It cannot therefore be required to participate in thousands-block number pooling.

Further, to the extent that rate center consolidation is undertaken in a way that requires NXXs to be split among different central offices, Rule 1220-4-2-.19(1)(c) could also effectively require

United to implement permanent local number portability. Under applicable law, however, rate center consolidation is not a basis for requiring implementation of permanent local number portability.

Respectfully submitted,

United Telephone Company

By:

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October 25, 2001

Its Attorney

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of United Telephone Company" was served on this 25th day of October 2001, by first class US mail postage prepaid, to the following parties:

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